No. 91-475

IN THE
Supreme Court of the United States
OCTOBER TERM, 1991

METROPOLITAN LIFE INSURANCE COMPANY,
Petitioner,

v.

BEATRICE HINDS CARLAND,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE FOR THE AMERICAN COUNCIL OF LIFE INSURANCE IN SUPPORT OF THE PETITION

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE FOR THE AMERICAN COUNCIL OF LIFE INSURANCE IN SUPPORT OF THE PETITION

The American Council of Life Insurance ("ACLI") hereby moves, pursuant to Rule 37.2 of the Rules of this Court, for leave to file the attached brief as *amicus curiae*. Counsel for the petitioner has consented to the filing of this brief; counsel for the respondent has refused consent.

The ACLI is the largest non-profit life insurance trade association in the United States, representing the interests of 616 member life insurance companies. The ACLI's

members currently hold 95 percent of the life insurance in force in legal reserve life insurance companies in the United States.

The decision below—that the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.*, as amended ("ERISA"), does not preempt a state divorce decree that purports to govern the payment of life insurance proceeds under a welfare benefit plan—poses serious concerns for the ACLI's members. Many of the ACLI's members act as claims-paying fiduciaries for welfare benefit plans that either they or other employers sponsor. When acting as fiduciaries of welfare plans under ERISA, the ACLI's members owe a duty, as a matter of federal law, to plan participants and beneficiaries to act in accordance with plan documents and ERISA. The Tenth Circuit's grave misapplication of ERISA's preemption provision—in particular, the "qualified domestic relations order" exception to ERISA preemption—causes substantial confusion and uncertainty in the exercise of these fiduciary obligations. More specifically, the decision below leaves insurer-fiduciaries uncertain about whether plan documents or conflicting state domestic relations orders control the payment of benefits under welfare benefit plans.

Because of its nationwide constituency, the ACLI is uniquely able to provide this Court with the views of the life insurance industry concerning the issue presented in this case and to offer additional arguments underscoring the importance of this Court's review. In other cases involving the scope of ERISA preemption, the ACLI has filed *amicus* briefs with this Court. *See, e.g., Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. 41 (1987). For these reasons, the Court should grant this motion for leave to file the attached brief *amicus curiae* in support of the Petition.

Respectfully submitted,

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QUESTION PRESENTED

Whether the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.*, as amended ("ERISA"), preempts a state divorce decree that purports to govern the distribution of life insurance proceeds under an ERISA-covered welfare benefit plan.

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BRIEF AMICUS CURIAE FOR THE AMERICAN COUNCIL OF LIFE INSURANCE IN SUPPORT OF THE PETITION

INTERESTS OF THE AMICUS

As stated in the Motion for leave to file this brief, the American Council of Life Insurance ("ACLI") is the largest non-profit life insurance trade association in the United States, representing the interests of 616 member life insurance companies. The ACLI's members currently hold 95 percent of the life insurance in force in legal reserve life insurance companies in the United States.

The Tenth Circuit's grave misapplication of the broad preemption provision in the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.*, as amended ("ERISA")—in particular, the "qualified domestic relations order" exception to ERISA preemption—poses serious concerns for the ACLI's members. Many of the ACLI's members act as claims-paying fiduciaries for welfare benefit plans that either they or other employers sponsor. The decision below, which holds that ERISA does not preempt a state divorce decree that relates to such a welfare plan, causes substantial confusion and uncertainty in the exercise of the fiduciary obligations of the ACLI's members. It leaves insurer-fiduciaries uncertain about their duties where plan documents differ from state domestic relations orders with respect to the payment of benefits under welfare benefit plans.

This brief is filed to provide the Court with the ACLI's unique perspectives concerning the excessive administrative burdens and uncertainties associated with the extension of ERISA's preemption exemption for "qualified domestic relations orders" to welfare benefit plans.

STATUTORY PROVISIONS INVOLVED

1. ERISA § 404(a), 29 U.S.C. § 1104(a), provides in part:

> (1) Subject to section 1103(c) and (d), 1342, and 1344 of this title, a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and—
>
> (A) for the exclusive purpose of:
>
> (i) providing benefits to participants and their beneficiaries; and
>
> (ii) defraying reasonable expenses of administering the plan;
>
> * * * *
>
> (D) in accordance with the documents and instruments governing the plan insofar as such docu-

ments and instruments are consistent with the provisions of this subchapter or subchapter III of this chapter.

2. ERISA § 206(d), 29 U.S.C. § 1056(d), provides in part:

> (1) Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated.
>
> * * * *
>
> (3)(A) Paragraph (1) shall apply to the creation, assignment or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except that paragraph (1) shall not apply if the order is determined to be a qualified domestic relations order. Each pension plan shall provide for the payment of benefits in accordance with the applicable requirements of any qualified domestic relations order.
>
> (B) For purposes of this paragraph—
>
> (i) the term "qualified domestic relations order" means a domestic relations order—
>
> (I) which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan, and
>
> (II) with respect to which the requirements of subparagraphs (C) and (D) are met, and
>
> (ii) the term "domestic relations order" means any judgment, decree or order (including approval of a property settlement) which—
>
> (I) relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant, and
>
> (II) is made pursuant to a State domestic relations law (including a community property law).
>
> * * * *

(J) A person who is an alternate payee under a qualified domestic relations order shall be considered for purposes of any provision of this chapter a beneficiary under the plan.

(K) The term "alternate payee" means any spouse, former spouse, child, or other dependent of a participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such participant.

(L) This paragraph shall not apply to any plan to which paragraph (1) does not apply.

* * * *

3. ERISA § 514, 29 U.S.C. § 1144, provides in part:

(a) Supersedure; effective date

Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975.

(b) Construction and application

* * * *

(7) Subsection (a) shall not apply to qualified domestic relations orders (within the meaning of section 1056(d)(3)(B)(i) of this title).

(c) Definitions

For purposes of this section:

(1) The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

* * * *

STATEMENT

1. In 1974, Congress enacted ERISA to provide needed protections to participants in employee benefit plans and to make pension plan regulation a matter of virtually exclusive federal concern. *See Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. 41, 44-46 (1987). By its plain terms, ERISA § 514(a) preempts "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." 29 U.S.C. § 1144(a). Consistent with the intended breadth of this preemption provision, Congress defined "State law" in ERISA to include "all laws, decisions, rules, regulations, or other State action having the effect of law, of any State" (ERISA § 514(c)(1), 29 U.S.C. § 1144(c)(1))—a definition broad enough to require preemption of state domestic relations orders that "relate to" ERISA plans.

In 1984, Congress amended ERISA to ensure protection of spouses entitled to receive pension benefits under ERISA-covered plans. In the Retirement Equity Act ("REA") of 1984, Congress acted:

> to improve the delivery of retirement benefits and provide for greater equity under private pension plans for workers and their spouses and dependents by taking into account changes in work patterns, the status of marriage as an economic partnership, and the substantial contribution to that partnership of spouses who work both in and outside the home, and for other purposes.

Retirement Equity Act of 1984, Pub. L. No. 98-397, Preamble, 98 Stat. 1426 (1984). To this end, Congress carved out an exception to ERISA's broad preemption provision for qualified domestic relations orders ("QDROs"). *See* ERISA § 514(b)(7), 29 U.S.C. § 1144(b)(7). This exemption protects the right of a "former spouse," as an "alternate payee" and "beneficiary" of a plan participant, to receive benefits under a pension plan in accordance with a state QDRO. ERISA § 206(d)(3),

29 U.S.C. § 1056(d)(3). It does so notwithstanding ERISA § 514(a)'s broad preemption of state law and ERISA § 206(d)'s specific prohibition against the assignment or alienation of pension plan benefits. ERISA § 206(d)(1), 29 U.S.C. § 1056(d)(1) ("[e]ach pension plan shall provide that benefits provided under the plan may not be assigned or alienated").

2. This case involves the decision of Metropolitan Life Insurance Company ("MetLife") to distribute life insurance proceeds to the current and former spouses of Ralph Carland ("Carland"), a participant in MetLife's employee welfare benefit plan. Prior to 1974, Beatrice Carland, a former spouse of Carland, was the sole beneficiary of the underlying life insurance policy based (at least in part) on a settlement agreement appended to a September 4, 1964 divorce decree. Pet. App. 3a. That settlement agreement defined the "Face Amount" of the policy as "Current value, less 1000.00." *Id.* On September 4, 1964, the date of the divorce, the "current value" of the policy was $14,000. *Id.* at 18a.

On March 1, 1974, Carland changed his beneficiary designation under the policy by completing a change of beneficiary form in accordance with the plan's procedures. Pet. App. 1a. This form, which was "recorded" in MetLife's files, designated Beatrice Carland, his former wife, as the beneficiary entitled to receive $13,000 of the policy proceeds and further designated Olive Carland, his current wife, as the beneficiary of the remainder of the policy. *Id.* On April 9, 1987, when Carland died, the value of the policy was $51,480. *Id.* at 18a. In accordance with Carland's beneficiary designation, MetLife then paid Beatrice Carland $13,000 (plus interest) and Olive Carland $38,480 (plus interest). *Id.* at 5a.

3. Beatrice Carland sued MetLife in the District Court for Reno County, Kansas, for wrongful denial of benefits, claiming entitlement to all of the policy's proceeds. Pet.

App. 5a. MetLife removed the action to the United States District Court in Kansas because Beatrice Carland's claim "related to" MetLife's welfare benefit plan within the meaning of ERISA's preemption provision and because her claim was cognizable under ERISA's civil enforcement provisions. *Id.* at 5a, 22a.

The federal district court initially rejected Beatrice Carland's argument that her divorce decree constituted a QDRO exempt from ERISA preemption, reasoning that ERISA's QDRO provisions apply only to pension plans and not to welfare plans like the MetLife plan. Pet. App. 25a.[1] The federal district court, reviewing MetLife's interpretation of the divorce decree under a *de novo* standard of review, concluded that MetLife had improperly distributed the policy proceeds; it concluded that "current value" in the divorce decree was the value of the life insurance policy at the time of Carland's death and that Beatrice Carland, as the beneficiary named in the decree, was entitled to receive that value. *Id.* at 29a-30a.[2]

4. The Tenth Circuit affirmed the result of the district court, but based on a diametrically opposed premise. It held that the QDRO provisions of ERISA apply to both welfare and pension benefit plans. Pet. App. 9a. In rejecting MetLife's argument that ERISA preempted the state divorce decree, the court of appeals recognized that ERISA § 514(b)(7) excepted QDROs "within the mean-

[1] ERISA expressly distinguishes pension plans from welfare plans, subjecting the former—but not the latter—to strict participation, funding and vesting requirements. *See* 29 U.S.C. §§ 1051, 1081. ERISA defines "pension plans" as plans that provide retirement income to employees (29 U.S.C. § 1002(2)(A)); it defines "welfare plans" as plans established for the purpose of providing medical and other non-pension benefits to employees (*id.* § 1002(1)(A)).

[2] The court added that MetLife could have avoided this payment question by interpleading the rival parties or otherwise seeking guidance from the court prior to distributing the proceeds. Pet. App. 29a-30a.

ing of section 1056(d)(3)(B)(i)" from ERISA's broad preemption provision. Pet. App. 9a. But it then held:

> Because the reference in the preemption clause to section 1056(d)(3)(B)(i) does not restrict application of the statutory preemption exception to pension benefit plans, however, we interpret the exception to apply to all qualifying domestic relation orders *whether they involve a pension or welfare benefit plan.*

Id. (emphasis added). Based on this construction of the statute, the Tenth Circuit concluded that the 1964 divorce decree met all of the statutory criteria under ERISA § 206(d)(3), 29 U.S.C. § 1056(d)(3), for a qualified domestic relations order and that ERISA thus did not preempt the divorce decree.

The Tenth Circuit then rejected MetLife's argument that its payment of the life insurance proceeds in accordance with the plan documents and the beneficiary designation forms satisfied its fiduciary obligations under ERISA. The court held that MetLife had a "duty to pay the appropriate beneficiary, taking into account the qualifying divorce decree" (Pet. App. 12a)—not just the plan documents. The court noted that "ERISA already requires an administrator of a *pension* benefit plan to investigate the marital history of a participant and determine whether a domestic relations order exists that could affect the distribution of benefits"; it added that its holding "only requires that administrators of *welfare* benefit plans also consider the marital history of a participant when paying benefits." *Id.* at 14a (emphasis added). In the court's view, MetLife "effectively ignored the interests of a beneficiary by participating, knowingly or unknowingly, in Ralph Carland's attempt to avoid his legal obligation to Beatrice Carland under the divorce decree." *Id.* at 14a-15a.

REASONS FOR GRANTING THE WRIT

I. THE TENTH CIRCUIT'S EXTENSION OF ERISA § 514(b)(7), WHICH EXEMPTS "QUALIFIED DOMESTIC RELATIONS ORDERS" FROM PREEMPTION, TO WELFARE BENEFIT PLANS AS WELL AS PENSION PLANS RAISES A SUBSTANTIAL QUESTION OF FEDERAL LAW

The Tenth Circuit held that a state divorce decree applicable to welfare plan benefits constituted a "qualified domestic relations order" under ERISA § 206 and thus was exempt from preemption under ERISA § 514(b)(7). The court below based this result on its view that, "[b]ecause the reference in the preemption clause to section 1056(d)(3)(B)(i) does not restrict application of the statutory preemption exception to pension benefit plans," the QDRO exception must, therefore, "apply to all qualifying domestic relation orders whether they involve a pension or welfare benefit plan." Pet. App. 9a. That conclusion cannot withstand close examination, and only this Court can correct the error and resolve the important question of federal law that this case presents.

1. The Tenth Circuit's decision that ERISA's QDRO provisions apply to welfare benefit plans as well as to pension plans ignores the plain statutory language, the statute's legislative history, and the pertinent case law interpreting the scope of ERISA § 206(d). In 1984, Congress enacted REA expressly "to improve the delivery of *retirement benefits* and provide for greater equity under private *pension* plans for workers and their spouses. . . ." Pub. L. No. 98-397, Preamble, 98 Stat. 1426 (1984) (emphasis added). To achieve this goal, Congress (1) enacted an exemption to ERISA's broad preemption provision for state QDROs (29 U.S.C. § 1144(b)(7)), (2) made it clear that these orders were an exception to the

anti-alienation provisions applicable to pension plans (*id.* § 1056(d)(1)), and (3) set up elaborate criteria and procedures to govern QDROs (*id.* § 1056(d)(3)).[3]

In so doing, Congress focused exclusively on *pension* plans, not *welfare* plans. Indeed, it unequivocally stated in ERISA § 206(d)(3)(L) that the QDRO provisions "shall not apply to any plan to which paragraph (1) does not apply." 29 U.S.C. § 1056(d)(3). Paragraph (1) refers only to "pension plans" and makes no reference whatever to welfare plans. ERISA § 206(d)(1), 29 U.S.C. § 1056(d)(1). Congress mentioned only pension plans and retirement benefits in the text of Section 206 itself. *See, e.g.*, ERISA § 206(d)(1), 29 U.S.C. § 1056(d)(1) ("Each *pension plan* shall provide . . ." (emphasis added); *id.* § 206(d)(3)(A), 29 U.S.C. § 1056(d)(3)(A) ("Each *pension plan* shall provide . . ." (emphasis added); *id.* § 206(d)(3)(E), 29 U.S.C.

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[3] Retirement Equity Act of 1984, Pub. L. No. 98-397, Title I § 104, 98 Stat. 1433 (1984). These statutory procedures, applicable to *pension* plans, require notice to the plan participant and alternate payees when a plan receives a domestic relations order. ERISA § 206(d)(3)(G)(i), 29 U.S.C. § 1056(d)(3)(G)(i). Each plan is required to "establish reasonable procedures to determine the qualified status of domestic relations orders . . . in writing." ERISA § 206(d)(3)(G), 29 U.S.C. § 1056(d)(3)(G). The statute provides a detailed set of criteria that domestic relations orders must meet if they are to be qualified. ERISA § 206(d)(3)(C), (D), 29 U.S.C. § 1056(d)(3)(C), (D).

These procedures further provide for delaying the payment of benefits subject to dispute while the plan administrator determines whether a domestic relations order is qualified—for a period limited to 18 months. ERISA § 206(d)(3)(H), 29 U.S.C. § 1056(d)(3)(H). The plan administrator is required to pay these benefits to the alternate payee designated in the plan documents—if the plan administrator has been unable to determine whether or not the domestic relations order underlying the dispute is qualified within the 18-month period. ERISA § 206(d)(3)(H)(iii), 29 U.S.C. § 1056(d)(3)(H)(iii). The plan's obligations owed to the participant and any alternate payee are "discharged" if these procedures are followed. ERISA § 206(d)(3)(I), 29 U.S.C. § 1056(d)(3)(I).

§ 1056(d)(3)(E) (references to "earliest retirement age" and "early retirement"); *id.* § 206(d)(3)(F), 29 U.S.C. § 1056(d)(3)(F) (references to ERISA § 205, 29 U.S.C. § 1055, pertaining to the joint and survivor annuity requirements for *pension* plans) (emphasis added); *id.* § 206(d)(3)(M), 29 U.S.C. § 1056(d)(3)(M) ("Payment of benefits by a *pension* plan in accordance with the applicable requirements of a qualifed domestic relations order . . .") (emphasis added).

Congress is well aware of the difference between pension plans and welfare plans: it distinguished welfare plans from pension plans throughout ERISA. *See, e.g.*, 29 U.S.C. § 1002(1), (2); 29 U.S.C. §§ 1051, 1081. And it expressly provided that Part 2 of ERISA's Subtitle B—the participation and vesting provisions that include the QDRO provisions—"shall apply to any employee benefit plan . . . *other than* . . . *an employee welfare benefit plan*. . . ." 29 U.S.C. § 1051 (emphasis added).[3] Congress thus made it clear that ERISA's QDRO provisions apply *only* to pension plans and that, when it referred to QDROs in ERISA's preemption provision, it could only have meant to exempt domestic relations orders involving pension plans from its reach.

That the QDRO provisions apply only to pension plans is made clear by REA's legislative history. That history demonstrates that Congress was addressing domestic relations orders only in the context of pension plans:

> The Committee's immediate goal is twofold: to increase the number of women who have a vested right

[3] *See* note 1, *supra*. The federal courts have likewise interpreted ERISA § 201 to mean that ERISA § 206(d) does not apply to welfare plans. *See Misic v. Building Service Employees Health and Welfare Trust*, 789 F.2d 1374, 1376 (9th Cir. 1986); *Nichol v. Pullman Standard, Inc.*, 889 F.2d 115, 119, n.6 (7th Cir. 1989); *Vogel v. Independence Fed. Sav. Bank*, 692 F. Supp. 587, 591 (D. Md. 1988).

> to a *pension* benefit and to provide adequate safeguard for spouses not employed outside the home.
>
> * * * *
>
> Changes are needed to make *pension* programs more responsive to changing roles of women and other workers who do not conform to traditional work patterns. The Retirement Equity Act of 1984 amends both ERISA and the Internal Revenue Code of 1954 to improve the delivery of *retirement benefits* and provide for greater equity under private *pension plans* for workers, their spouses, and their dependents.

H.R. Rep. No. 655, 98th Cong., 2d Sess., pt. 1 at 25 (1984) (emphasis added). Given Congress' focus on pension plans, REA's legislative history has many references to pension, not welfare, plans.[5] Congress plainly left for

[5] *See* S. Rep. No. 575, 98th Cong. 2d Sess. 18 (1984) (emphasis added) ("Generally, under present law, benefits under a *pension, profit sharing,* or *stock bonus plan* (*pension plans*) are subject to prohibition against assignment or alienation"); (emphasis added); H.R. Rep. No. 655, 98th Cong., 2d Sess. pt. 2, at 17 (1984) (similar language); *See also* 130 Cong. Rec. 13325 (1984) (Rep. Rostenkowski) ("H.R. 4280 is designed to improve the treatment of women under private *pension plans*. . . ."); (emphasis added); 130 Cong. Rec. 13326 (1984) (Rep. Conable) ("[. . .] this bill was motivated largely by concerns that women as workers and dependents were not being treated fairly by many *pension plans* under present law . . ."); (emphasis added); 130 Cong. Rec. 22503 (1984) (Sen. Percy) ("This legislation would allow *pension* funds to be treated as joint property in divorce proceedings"); (emphasis added); 130 Cong. Rec. 22503 (1984) (Sen. Duerenberger) ("Successful consideration of *pension* reform is an important beginning. . . . It [the bill] would allow for equitable division of *pension* accounts in court-ordered divorce actions."); (emphasis added); 130 Cong. Rec. 22506 (1984) (Sen. Heinz) ("H.R. 4280 makes it clear that ERISA language was never intended to preclude division of the *pension* as community property in domestic relations orders."); (emphasis added); 130 Cong. Rec. 23486 (1984) (Rep. Clay) ("Those provisions [the domestic relations provisions] generally provide for the assignment of *pension* benefits to a former spouse, and for treating a former spouse as a surviving spouse in certain

another day ERISA's application to state domestic relations orders dealing with welfare benefits. *See Pension Equity for Women: Hearing on H.R. 2100 Before the Subcomm. on Labor-Management Relations of the House Comm. on Education and Labor*, 98th Cong., 1st Sess. 31 (1983) (Rep. Ferraro to Rep. Erlenborn) ("You are absolutely right, and I would hope that women would take advantage of life insurance. . . . But the point is that you can only take one piece at a time.").

This Court and a majority of the federal courts of appeals have, moreover, recognized the limitation of ERISA § 206 to pension plans. In dictum, this Court has stated that ERISA's QDRO provisions only apply to pension plans and not to welfare plans:

> Ultimately, in examining §§ 206(d)(1) [ERISA, 29 U.S.C. § 1056(d)(1)] and 514(a) [ERISA, 29 U.S.C. § 1144(a)] there is no ignoring the fact that, when Congress was adopting ERISA, it had before it a provision to bar the alienation or garnishment of ERISA plan benefits and chose to impose that limitation only with respect to ERISA pension benefit plans, and *not* ERISA welfare benefit plans. In a comprehensive regulatory scheme like ERISA, such omissions are significant ones.

Mackey v. Lanier Collection Agency & Service, Inc., 486 U.S. 825, 837 (1988) (emphasis in original). Every federal court of appeals that has explicitly addressed this question, aside from the Tenth Circuit in the instant case, has agreed. *See Misle v. Building Service Employees Health and Welfare Trust*, 789 F.2d 1374, 1376 (9th Cir. 1986) ("[w]e find no basis for holding section 1056(d) applicable to the type of assignment of health

cases"); (emphasis added); 130 Cong. Rec. 29490 (1984) (Rep. Rinaldo) ("the legislation resolves an ambiguity in existing law by clarifying that a judge may divide *pension* benefits between the spouses pursuant to alimony, child support, and property settlement orders and decrees."); (emphasis added).

and welfare benefits involved in this case"); *Nichol v. Pullman Standard, Inc.*, 889 F.2d 115, 119-21 (7th Cir. 1989) ("the antialienation provision of ERISA section 206(d)(1) [29 U.S.C. § 1056(d)(1)] does not apply to welfare benefit plans."); *see also Arizona Laborers, Teamsters, and Cement Masons, Local 395 Pension Trust Fund v. Nevarez*, 661 F. Supp. 365, 369 (D. Ariz. 1987) ("the court finds 29 U.S.C. § 1056(d)(1) does not cover welfare plans"); *Vogel v. Independence Fed. Sav. Bank*, 692 F. Supp. 587, 591-92 (D.Md. 1988).

The court below thus had no sound basis for its holding that ERISA § 514(b)(7) exempts domestic relations orders relating to welfare plans from preemption. The plain language of the statute makes clear that, in REA, Congress acted on domestic relations orders that affect pension plans—not those that affect welfare plans—and intended to exempt only the former from preemption. The legislative history amply confirms this intent. To hold, as the court below did, that ERISA saves from preemption domestic relation orders affecting welfare benefit plans—based solely on the fact that ERISA § 514(b)(7) does not use the phrase "pension plan"—is to distort both the statute and congressional intent.

2. This decision, if not reversed, will pose massive problems for ERISA plan administrators and warrants this Court's review. The Tenth Circuit's decision subjects plan administrators to great uncertainty as to whether ERISA preempts the application of state domestic relations orders to welfare plans (as the statute makes clear) or whether, on the contrary, those state orders will govern the distribution of welfare plan benefits between current and former spouses (as the Tenth Circuit holds). Moreover, the decision below, if it stands, will burden plan administrators with a new requirement, i.e., the development of QDRO procedures for welfare plans, even though ERISA imposes those procedures only on pension plans—a requirement that even the court below acknowledged.

Pet. App. 14a. And the decision below will likewise burden the courts with the development of a totally new body of law applicable to the interpretation of the QDRO provisions in the context of welfare benefit plans.

This Court should, therefore, grant review to correct this error of a statutory interpretation, to clarify the application of ERISA's preemption clause to state domestic relations orders, and to alleviate the disparate burden and uncertainty that the decision below imposes on plan administrators.

II. THE FEDERAL COURTS OF APPEALS HAVE ADOPTED VARYING APPROACHES IN DETERMINING WHETHER ERISA PLAN DOCUMENTS OR STATE DOMESTIC RELATIONS ORDERS CONTROL THE PAYMENT OF BENEFITS UNDER WELFARE BENEFIT PLANS, CREATING GREAT UNCERTAINTY AND CONFUSION FOR PLAN ADMINISTRATORS

In holding that ERISA does not preempt the application of a state domestic relations order to MetLife's welfare benefit plan, the Tenth Circuit made a state divorce decree control over the plan documents governing this ERISA plan. This decision undermines ERISA's fiduciary requirements, which require plan fiduciaries to discharge their obligations to participants and beneficiaries "in accordance with the documents and instruments governing the plan . . ."—a requirement applicable to fiduciaries of *both* pension and welfare plans. ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D). It also conflicts with the approaches of other courts of appeals in resolving conflicting beneficiary designations involving former spouses with state divorce decrees purporting to dispose of plan benefits, and current spouses designated as "beneficiaries" in plan documents. The decision below thus spawns needless confusion that should be resolved by this Court.

In an important respect, ERISA allows a plan participant to be the "master of his own ERISA plan" (*McMil-*

lan v. Parrott, 913 F.2d 310, 312 (6th Cir. 1990)): it defines a "beneficiary" as a "person designated by a *participant*, or by the terms of an employee benefit plan," to receive benefits under the plan. ERISA § 3(8), 29 U.S.C. § 1002(8) (emphasis added). Congress has, however, specifically provided that a "former spouse" *not* designated as a "beneficiary" in the plan documents, but instead designated as an "alternate payee" under a state domestic relations order, may also attain "beneficiary" status under a *pension* plan. ERISA § 206(d)(3)(J), 29 U.S.C. § 1056(d)(3)(J). But such a spouse can do so only if the state order "qualifies" as a QDRO under the statute. Thus, absent a QDRO that requires payment to an alternate payee under a *pension* plan—as an exception to the rule forbidding alienation of *pension* benefits—plan documents (not state orders) should control the payment of benefits under both pension and welfare benefit plans. *See* ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D).

Despite the statutory requirement that fiduciaries discharge their obligations "in accordance with the documents and instruments governing the plan" (29 U.S.C. § 1104(a)(1)(D)), the courts of appeals have adopted varying approaches in resolving conflicts between plan documents and state domestic relations orders. Consistent with the statutory scheme, some courts of appeals have properly relied on plan documents—not conflicting state divorce decrees—to determine benefit payments. In *McMillan*, 913 F.2d at 311, for example, the Sixth Circuit held that plan documents designating a former spouse as a beneficiary controlled over the former spouse's general waiver of any claims against her husband's property in a divorce settlement agreement. Likewise, in *Lyman Lumber Co. v. Hill*, 877 F.2d 692, 693 (8th Cir. 1989), the Eighth Circuit held that plan documents designating a former spouse as a beneficiary of a profit-sharing plan controlled over the former spouse's waiver of her interest in the profit-sharing plan in a settlement agreement incor-

porated in a divorce decree. *See also Brown v. Connecticut General Life Ins. Co.*, No. CV89-H-1430-S and CV89-H-2063-S, slip op. at 6 (N.D. Ala. May 17, 1990), *aff'd*, 934 F.2d 1193, 1197 (11th Cir. 1991) (rejecting a former wife's claim of beneficiary status based on a divorce decree).[6]

Other courts have, like the court below, taken a different approach. In *Fox Valley & Vicinity Construction Workers Pension Fund v. Brown*, 897 F.2d 275, 282 (7th Cir.), *cert. denied*, 111 S. Ct. 67 (1990), for example, the Seventh Circuit rejected the claim of a former spouse to a decedent participant's death benefit, holding that the former spouse's waiver in a divorce settlement agreement of any claim to pension plan benefits controlled over the plan documents designating her as the beneficiary.

These conflicting approaches can only undermine the uniform application of ERISA's fiduciary requirements. In enacting ERISA, Congress emphasized the importance of uniform standards governing fiduciaries making benefit payment decisions:

> The uniformity of decision which the Act is designed to foster will help administrators, fiduciaries and participants to predict the legality of proposed actions without the necessity of reference to varying state laws.

H.R. Rep. No. 533, 93d Cong., 1st Sess., at 12 (1973); *see Ingersoll-Rand Co. v. McClendon*, 111 S. Ct. 478, 484 (1990) ("Section 514(a) was intended to ensure that plans and plan sponsors would be subject to a uniform body of benefit law; the goal was to minimize the ad-

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[6] In both *Lyman Lumber* and *McMillan*, the courts rejected the effectiveness of the state divorce decree in altering the plan document's designation of beneficiary based, in part, on the lack of specificity in the divorce decree. *See Lyman Lumber Co.*, 877 F.2d at 693-4; *McMillan*, 913 F.2d at 312.

ministrative and financial burden of complying with conflicting directives among States or between States and the Federal Government."). Such uniformity is essential if parties are "to be certain of their rights and obligations" (*McMillan*, 913 F.2d at 312); indeed, "[i]t is for this reason that ERISA plans are to be administered according to their controlling documents" as a matter of federal law. *Id.*

The decision below threatens precisely the type of disuniformity in decision-making that Congress sought to prevent in ERISA. If the decision below stands, plan administrators will be uncertain as to whether a participant's beneficiary designation or a state court order governs the payment of welfare benefits. The decision below will force welfare plan administrators to withhold payment in all cases until they have determined whether there are any divorce decrees affecting plan participants and to set up procedures (like those for QDROs) to determine whether to dispose of welfare benefits in accordance with a divorce decree or the plan documents. The decision below will also leave welfare plan administrators with little choice but to engage in costly and burdensome interpleader or declaratory judgment actions to ascertain their obligations—delaying the payment of benefits to the participants' intended beneficiaries.[7]

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[7] The possibility that reversing the court below might pave the way for participants to evade divorce decrees is no basis for judicially extending the QDRO provisions to welfare plans when Congress clearly limited them to pension plans. This Court has refused to extend the equitable remedies provided under ERISA § 409(a), 29 U.S.C. § 1109(a), for breaches of fiduciary duties owed to a pension plan to the embezzlement by a union official of union funds—as distinct from pension funds—even though there may have been a "natural distaste for the result." *Guidry v. Sheet Metal Workers National Pension Fund*, 493 U.S. 365, 377 (1990).

Only this Court can resolve this problem and maintain the uniformity in decision-making that Congress sought to insure when its first enacted ERISA.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

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